THE HON'BLE SRI JUSTICE BILAL NAZKI

and

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NO.26874 OF 2005

Date:20th December, 2005

Between:

M/s Lohiya Vanaspathi Pvt. Ltd …Petitioner

And

The Commissioner of Customs &

Central Excise, Visakhapatnam-II and

Another …Respondents

THE HON'BLE SRI JUSTICE BILAL NAZKI

and

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NO.26874 OF 2005

O R D E R (Per the Hon'ble Sri Bilal Nazki, J):

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Heard learned counsel for the petitioner and also learned Assistant Solicitor General.

This writ petition has been filed against the order of the Commissioner of Customs &

Central Excise, Visakhapatnam-II, mainly on the ground that the Bench of Customs, Excise & Service Tax Appellate Tribunal at Bangalore is not functioning as there are no Officers.

Last time, when this case came up for admission, we directed learned Assistant Solicitor General to get instructions. On instructions, he submitted that as the technical member was somewhere busy in Chennai, the Bench would be functional from 1st of January, 2006. Therefore, the appeal filed by the petitioner against the order of the Commissioner can be taken up after 1st of January, 2006. The petitioner, however, contends that a duty of 100% has been levied by the impugned order over the goods, whereas according to him, only 80% of duty could be levied, and he is prepared to deposit 80% of duty and he is also prepared to give a bank guarantee for the differential amount of 20% and as the goods are perishable in nature, therefore, the goods may be released in his favour.

We feel that this is a just prayer and in the absence of a functional Tribunal, this Court, in order to protect the rights of the parties and after hearing both the counsel, passes the following order:

1. That the goods shall be released by the respondents on receipt of payment of 80% of duty. For the remaining 20% balance, the petitioner shall give a bank guarantee.

2. The payment of fine and penalty shall remain stayed till disposal of the appeal by the Tribunal.

With these directions, the writ petition is disposed of. No order as to costs.

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(Bilal Nazki, J)

20th December, 2005

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(S.Ananda Reddy,J)

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Note: Issue C.C. by tomorrow

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